

Application No.: 10/002,521
Amendment and Response dated May 10, 2005
Reply to Office Action of March 10, 2005
Docket No.: 760-35 CIP/RCE II
Page 7

REMARKS

Applicants would like to thank Examiner Miller for the telephonic interview with Applicants' representatives on May 4, 2005. The subject matter discussed was Applicants' claim 24.

Claims 1-3 and 21-24 remain in this application. Claim 24 has been amended, and new claims 25 and 26 have been added. Applicants respectfully request reconsideration in view of the above amendments and the following remarks.

The Final Office Action is Premature

As a preliminary matter, before responding to the rejections raised by the Examiner, Applicants respectfully submit that the finality of the rejection is premature. In the Office Action dated September 9, 2004, the Examiner rejected claim 24 under 35 U.S.C. §102(b) over Pinchuk and under 35 U.S.C. §103(a) over Zilla. The Examiner alleged that claim 24 recited an end product that was anticipated, or obvious, in view of the cited art. In the Amendment and Response thereto (dated December 9, 2004), Applicants pointed out that claim 24 was not directed to an end product, but rather an intermediate product. In view thereof, Applicants explained that the Section 102 and 103 rejections were improper. Applicants did not amend claim 24 at that time because the rejections were not based on a proper reading of the claim. The Examiner subsequently issued a final Office Action, maintaining the previous rejections of claim 24 as an end-product.

During a telephonic interview with Applicants' representatives on May 4, 2005, the Examiner acknowledged that claim 24 is directed to an intermediate product and that the previous Office Actions failed to address the claim as such. The Examiner agreed that the Section 102 rejection over Pinchuk was not applicable to the claimed intermediate. The Examiner, however, indicated that the intermediate product recited in claim 24 would be rejected under 35 U.S.C. §103(a) over Zilla.

Application No.: 10/002,521
Amendment and Response dated May 10, 2005
Reply to Office Action of March 10, 2005
Docket No.: 760-35 CIP/RCE II
Page 8

Although the statutory basis of the rejection over Zilla is the same, i.e., 35 U.S.C. §103(a), the application of the reference to the claim is different. In the Office Actions the Examiner improperly applied Zilla to an end product, whereas now the Examiner is applying Zilla to an intermediate product. Because Applicants first learned of this reasoning for rejection after final, Applicants did not have an opportunity to address the rejection and submit amendments and/or remarks in response thereto. Moreover, the Examiner has not issued an Office Action detailing this ground of rejection in writing.

In view thereof, Applicants respectfully submit that the finality is premature. *See* MPEP § 706.07(a) (“Before final rejection is in order a clear issue should be developed between the examiner and applicant.”). A “clear issue” with respect to claim 24 was not developed until after the final Office Action was mailed.

Applicants respectfully request reconsideration and withdrawal of the finality of the rejection, thereby permitting an appropriate opportunity to which they are entitled under the law to address the newly reasoned rejection.

Applicants’ Response to 35 U.S.C. §102 Rejection over Pinchuk

Claims 1, 3 and 21-24 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,657,544 to Pinchuk (hereinafter “Pinchuk”). Applicants respectfully traverse the rejection on the basis that Pinchuk fails to disclose each and every element of Applicants’ claims.

The Examiner has maintained the rejections of claims 1, 3 and 21-24 over Pinchuk as expressed in the previous Office Action dated September 9, 2004. With respect to claims 1, 3 and 21-23, Applicants respectfully reiterate the arguments presented in the Amendment and

Application No.: 10/002,521
Amendment and Response dated May 10, 2005
Reply to Office Action of March 10, 2005
Docket No.: 760-35 CIP/RCE II
Page 9

Response dated December 9, 2004, which were responsive to the Office Action of September 9, 2004.

More specifically, Applicants again respectfully submit that Pinchuk fails to disclose, teach or suggest an interpenetrating polymer network ("IPN") of PTFE and another polymer component. Because Applicants' compositions in claims 1, 3, 21 and 22 require an IPN, Pinchuk fails to anticipate this element of Applicants' claims 1, 3, 21 and 22.

As regards claim 23, Pinchuk does not teach or suggest pores that are defined by a gel, liquid or flowable material. Such pores would be distinctly different than those defined by salt crystals as these materials are in different phases. As such, Applicants respectfully submit that Pinchuk fails to disclose each and every element of Applicants' claim 23.

With respect to claim 24, as described in detail above, the final Office Action addressed the claim as an end product. During the telephonic interview on May 4, 2005, however, the Examiner acknowledged that claim 24 relates to an intermediate product. The intermediate product of claim 24 is an extrudate that requires a non-expanded PTFE resin and a particulate polymeric component which is incompatible with the PTFE resin. Moreover, Applicants have amended claim 24 herein to recite that the product "consists essentially of" these components. The claimed product, therefore, requires a particulate polymeric component that is incompatible with PTFE.

Nowhere in Pinchuk is such a particulate polymeric component disclosed, taught or suggested. Salt crystals are not polymeric. Pinchuk therefore fails to anticipate each and every element of Applicants' amended claim 24. During the May 4th telephonic interview, the Examiner acknowledged that the Section 102 rejection over Pinchuk should be withdrawn. Accordingly, Applicants respectfully request reconsideration and withdrawal of the Section 102 rejection of claim 24.

Application No.: 10/002,521
Amendment and Response dated May 10, 2005
Reply to Office Action of March 10, 2005
Docket No.: 760-35 CIP/RCE II
Page 10

In view of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the Section 102 rejections over Pinchuk.

Applicants' Response to 35 U.S.C. §103 Rejection over Pinchuk in view of Dereume

Claim 2 is rejected under 35 U.S.C. §103(a) as allegedly being obvious over Pinchuk in view of U.S. Patent No. 5,639,278 to Dereume et al. (hereinafter "Dereume"). Applicants respectfully traverse the rejection.

The Examiner has maintained the rejection of claim 2 over Pinchuk in view of Dereume as expressed in the previous Office Action dated September 9, 2004. Applicants again respectfully submit that the combination of Pinchuk and Dereume fail as a proper combination under 35 U.S.C. §103. Dereume is cited only for its teachings of combining a stent and a graft together and fails to teach or suggest anything of any relevance to the present invention as recited in the claims. Dereume clearly fails to cure the deficiencies of Pinchuk, as described in detail above and in the Amendment and Response dated December 9, 2004. The combination of Pinchuk and Dereume therefore fails to disclose each and every element of the claimed invention.

Withdrawal and reconsideration of this Section 103 rejection is therefore respectfully requested.

Applicants' Response to 35 U.S.C. §103 Rejection over Zilla

Claims 1, 3 and 21-24 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 6,540,780 to Zilla et al. (hereinafter "Zilla"). Applicants respectfully traverse the rejection.

Application No.: 10/002,521
Amendment and Response dated May 10, 2005
Reply to Office Action of March 10, 2005
Docket No.: 760-35 CIP/RCE II
Page 11

The Examiner has maintained the rejections of claims 1, 3 and 21-24 over Zilla as expressed in the previous Office Action, dated September 9, 2004. With respect to claims 1, 3 and 21-23, Applicants reiterate the arguments presented in the Amendment and Response dated December 9, 2004, which were responsive to the Office Action of September 9, 2004.

More specifically, Applicants again respectfully submit that Zilla fails to disclose, teach, or suggest an IPN including PTFE and another extractable polymeric component, as required by claims 1, 3, 21 and 22. As such, Zilla fails to suggest each and every element of Applicants' claims 1, 3, 21 and 22, and withdrawal and reconsideration of this rejection is respectfully requested.

With regard to claim 23, Applicants again respectfully submit that Zilla discloses extractable fibers and fillers, however, neither of these is in the form of a gel, liquid or flowable material. Pores defined by a gel, liquid or flowable material are distinctly different than those defined by the fibers and fillers of Zilla as these materials are in different phases. Because claim 23 requires pores that are defined by a gel, liquid or flowable material, Zilla fails to teach or suggest this element of the claimed product.

As described in the discussion of Pinchuk above, Applicants' claim 24 is directed to an intermediate product. Claim 24 requires a PTFE resin and a particulate polymeric component that is incompatible with the PTFE resin. Moreover, claim 24 has been amended herein to recite that the product "consists essentially of" these components.

In contrast, Zilla relates to polyurethane grafts that require helical channels formed by extraction of helical fibers. Applicants' claim 24 excludes such helical channels created by helical fibers due to the present amendment. More specifically, amended claim 24 is limited to an extrudate "consisting essentially of" certain components. The incorporation of helical fibers would materially change the basic characteristic of the invention recited in claim 24. Such fibers

Application No.: 10/002,521
Amendment and Response dated May 10, 2005
Reply to Office Action of March 10, 2005
Docket No.: 760-35 CIP/RCE II
Page 12

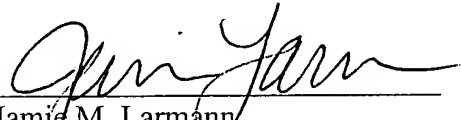
are not merely a minor additive. Zilla, therefore, does not teach or suggest claim 24, as amended herein.

Therefore, Zilla fails to suggest each and every element of Applicants' claims 1, 3 and 21-24. Withdrawal and reconsideration of the Section 103 rejections based on Zilla is respectfully requested.

In view of the foregoing, Claims 1-3 and 21-24 are now believed to be in proper form for allowance. A favorable reconsideration of the application on the merits is earnestly solicited.

If the Examiner has any questions regarding this Response, she is encouraged to contact the undersigned attorney.

Respectfully submitted,



Jamie M. Larmann
Registration No. 48,623
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791
(973) 331-1700